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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/807,468

03/24/2004

Gerald Toerner

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09/07/2006

JAMES W. PRAVEL  
PRAVEL INTELLECTUAL PROPERTY LAW, PC  
1800 DIAGONAL ROAD  
SUITE 600  
ALEXANDRIA, VA 22314

EXAMINER

LUSTUSKY, SARA

ART UNIT

PAPER NUMBER

3735

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,468	<b>Applicant(s)</b> TOERNER, GERALD	
	<b>Examiner</b> Sara Lustusky	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/21/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 13-17** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 13, the claim is indefinite because it inappropriately attempts to claim two statutory types of invention. The preamble of the claim recites a device used with a method. The body of the claim positively recites both method steps defining a method and structural elements defining an apparatus. A claim may be directed to only one statutory type of invention. One cannot be certain whether Applicant is attempting to claim a method or an apparatus since both are positively recited in the claim. For purposes of examination in this Office action the Examiner will treat claims 13-17 as apparatus claims where the method recited therein is directed to the intended use of the apparatus.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 13** is rejected under 35 U.S.C. 102(b) as being anticipated by Hall (Patent 6428451 B1).

Hall teaches a rotatable device capable of being used by a patient who is either sitting or laying on their side, the device comprising a disk member (10) rotatably attached to a base member (120), a bearing assembly (137, 147) (as described in lines 38-41 of column 3) to facilitate the rotation and a plurality of handles (12, 14) on the disk member (10) (as seen in Figures 1, and 6-8).

**Claims 13 and 15** are rejected under 35 U.S.C. 102(b) as being anticipated by Sellards (Patent 2467338).

Sellards teaches a rotatable device capable of being used by a patient who is either sitting or laying on their side, the device comprising a disk member (11) rotatably attached to a base member (18, 22) with feet (23), a bearing assembly (17) (as described in lines 13-36 of column 2) to facilitate the rotation and a plurality of handles (12) on the disk member (11) (as seen in Figures 1-3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**Claims 1-4 and 9-11** are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kavar (2002).

Kavar teaches a method for treating patients with vestibular dysfunctions, which is a symptom of patients with sensory integration disorder, the method comprising providing a rotatable platform, placing a patient on said platform in a first position, spinning the patient in one direction then spinning the patient in the opposite direction; wherein this process is repeated for a second position and a third position; wherein the positions include sitting, laying on the right side and laying on the left side; wherein the process may be repeated based on the tolerance of the patient; wherein the desired rotational speed for each process is approximately 30 revolutions per minute (as described in lines 1-15 of column 2 on page 354 and in lines 37-49 of column 1 on page 355).

While Kavar does not teach that this method is performed on a platform rotatably connected to a base, it would have been obvious to one of ordinary skill in the art at the time of the invention that any rotating platform could be used to perform this method, including a platform connected to a base because the ability to rotate the patient is the focus of the method and not the type of device being used to perform the rotation.

**Claims 1 and 6-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kavar (2002) in view of Muffly (Patent 3785641).

Kavar teaches the method of claim 1, for treating patients with vestibular dysfunctions, which is a symptom of patients with sensory integration disorder, the method comprising providing a rotatable platform, placing a patient on said

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platform in a first position, spinning the patient in one direction then spinning the patient in the opposite direction, as described above. However, Kwar does not teach that the device used to spin the patient is a platform that has handles and is connected to a base.

Muffy teaches a rotatable platform (10) with handles (14) positioned at approximately 10:00 O'clock and 2:00 O'clock, the platform (10) being connected to a base (26) (as seen in Figures 1 and 2) (as described by claim 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a device similar to that of Muffy to perform a method similar to that of Kwar because the device of Muffy allows for controllably spinning a user in a sitting or laying position on the disc (as described in lines 21-27 of column 1 of Muffy).

**Claim 5** is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kwar (2002).

Kwar teaches the method of claims 1-3, as described above, the method comprising: providing a rotatable platform, placing a patient on said platform in a first position, spinning the patient in one direction then spinning the patient in the opposite direction and repeating the steps of spinning the patient in a second and third position. While Kwar teaches that this method may be modified to address the different needs of each patient as well as each patient's tolerance level to spinning, Kwar does not expressly teach an interval of 72 hours between each method step.

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At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to give the patient 72 hours of recovery time between each method step because Applicant has not disclosed that a 72 hour interval provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Kavar's method, and applicant's invention, to perform equally well with intervals defined by a therapist on a per-patient basis as described by Kavar or the claimed 72 hour interval because both intervals would perform the same function of giving the patient time to recover from the spinning exercise.

Therefore, it would have been prima facie obvious to modify Kavar to obtain the invention as specified in claim 5 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Kavar.

**Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kavar (2002) in view of Abledata (1998, 1999).

Kavar teaches the method of claim 1, for treating patients with vestibular dysfunctions, which is a symptom of patients with sensory integration disorder, the method comprising providing a rotatable platform, placing a patient on said platform in a first position, spinning the patient in one direction then spinning the patient in the opposite direction, as described above. However, Kavar does not teach that this method is used with a device comprising a base and a bearing assembly.

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Abledata teaches a device comprising a platform that is rotatably connected to a base wherein a bearing assembly facilitates the rotation of the platform with respect to the base and sized to accommodate the size of the user and/or the desired position of the user (as described and dated by Abledata).

It would have been obvious to one of ordinary skill in the art to use a device similar to that described by Abledata with a method similar to that taught by Kwar because the device taught by Abledata was designed and sold to provide vestibular stimulation (as described by the product description of Abledata).

**Claims 6-7 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwar (2002) in view of Wen-Ta Fan et al. (Patent 7008359 B2).

Kwar teaches the method of claim 1, for treating patients with vestibular dysfunctions, which is a symptom of patients with sensory integration disorder, the method comprising providing a rotatable platform, placing a patient on said platform in a first position, spinning the patient in one direction then spinning the patient in the opposite direction, as described above. However, Kwar does not teach that the device used to spin the patient is a platform that is covered in a non-skid material, has handles and is connected to a base.

Wen-Ta Fan et al. teaches the use of a platform (104) rotatably connected to a base (102), the platform (104) having a plurality of handles (which may be positioned at approximately 10:00 O'clock and 2:00 O'clock, the platform being



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covered in a non-skid material (as seen in Figure 2) (as described in lines 26-53 of column 3 and in the abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a device similar to that of Wen-Ta fan et al. with a method similar to that of Kavar because the device of Wen-Ta Fan et al. is capable of rotating a patient in a sitting or laying position in both directions, using handles for securing the patient and a surface to prevent the patient from sliding during rotation.

**Claim 14** is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall (Patent 6428451 B1) in view of Wen-Ta Fan et al. (Patent 7008359 B2).

Hall teaches the rotatable device of claim 13 comprising a disk member (10) rotatably attached to a base member (120), a bearing assembly (137, 147) and a plurality of handles (12, 14), as described above. However, Hall does not teach that the surface of the disc is covered in a non-skid material.

Wen-Ta Fan et al. teaches the use of a platform (104) rotatably connected to a base (102), the platform (104) having a plurality of handles (which may be positioned at approximately 10:00 O'clock and 2:00 O'clock, the platform being covered in a non-skid material (as seen in Figure 2) (as described in lines 26-53 of column 3 and in the abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to cover the disc on a device similar to that of Wen-Ta fan et al. with a non-skid material in view of the teachings of Wen-Ta Fan et al. because it will

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increase the comfort the patient and a surface to prevent the patient from sliding during rotation to avoid injury.

**Claims 16 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sellards (Patent 2467338) in view of Sachs (Patent 7081075 B2).

Sellards teaches the device of claims 13 and 15 comprising a disc member rotatably attached to a base with feet and a bearing assembly to allow for rotation and a plurality of handles on the disc, as described above. However, Sellards does not teach that the feet are constructed of a polymer material.

Sachs teaches a device comprising a disk member (1) rotatably attached to a base with feet (15) and a bearing assembly (5); wherein the feet (15) are constructed of a polymer rubber material (as seen in Figures 11 and 12) (as described in lines 52-64 of column 6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to construct feet on a device similar to that of Sellards out of a polymer rubber material in view of the teaching of Sachs because rubber is commonly used to prevent a device from slipping from the surface on which it rests which prevents a user of the device from becoming injured as a result of the slipping of the device (as described in lines 60-64 of column 6 of Sachs).

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lambert (Patent 5118094), Trubody (Patent 4119310) and Wormser (Patent 3510127) teach a platform rotatable around a base with a bearing assembly.

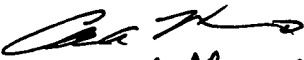
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Lustusky whose telephone number is (571) 272 8965. The examiner can normally be reached on M-F: 9 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272 4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
S.L.

  
Charles A. Marmor, II  
SPE, Art Unit 3735